

JUN 20 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL GENE THYMES,

Plaintiff - Appellant,

v.

UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION,
LOCAL 1167

Defendant - Appellee.

No. 05-55529

D.C. No. CV-03-00108-SGL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Stephen G. Larson, Magistrate Judge, Presiding^{***}

Submitted June 12, 2006^{**}

Before: WALLACE, KLEINFELD, and BERZON, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The parties consented to proceed before a magistrate judge.

Carl Gene Thymes appeals pro se from the district court's summary judgment for the United Food and Commercial Worker's International Union, Local 1167, ("Union") in Thymes' action alleging that his Union breached its duty of fair representation when it did not arbitrate his grievance against his employer. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Jesinger v. Nevada Fed. Credit Union*, 24 F.3d 1127, 1130 (9th Cir. 1994), and we affirm.

The district court properly concluded that Thymes failed to raise a genuine issue of material fact as to whether the Union breached its duty of fair representation in choosing to not pursue Thymes's grievance in arbitration. *See Stephens v. Moore Business Forms, Inc.*, 18 F.3d 1443, 1447 (9th Cir. 1994). The evidence shows that the Union investigated Thymes's allegations, and found that his claims of discrimination could not be substantiated by documents that Thymes offered as evidence. Moreover, the Union requested that Thymes provide further plausible, specific, information to substantiate his claims of discrimination, and Thymes failed to do so. Under these circumstances, we cannot say that the Union acted "in an arbitrary, discriminatory, or bad faith" manner towards Thymes. *See id.*; *Airline Pilots Ass'n Int'l v. O'Neill*, 499 US 65, 66 (1991) (unions are to be afforded a wide latitude in determining how to handle grievances and in deciding what grievances are to proceed to arbitration).

Thymes's remaining contentions are unpersuasive.

AFFIRMED.